

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION



BIO-RAD LABORATORIES, INC.

Plaintiff,

v.

APPLERA CORPORATION and  
APPLIED BIOSYSTEMS,

Defendants.

CASE NO. C 02-5946 JW

**CONSENT JUDGMENT AND PERMANENT INJUNCTION**

WHEREAS Plaintiff Bio-Rad Laboratories, Inc. ("Bio-Rad") has alleged that, *inter alia*, Defendants Applera Corporation and its Applied Biosystems group (collectively, "Applera" or the "Defendants") have infringed U.S. Patent No. 5,089,111 ("the '111 patent") and the "BIO-RAD" trademark (each of Bio-Rad and Applera a "Party" and, collectively, "Parties");

WHEREAS Defendants have asserted certain defenses and counterclaims to the '111 patent and the trademark infringement and related claims of Bio-Rad;

WHEREAS, this Court by order filed March 23, 2004 construed claims of the '111 patent;

WHEREAS, this Court, by order filed August 12, 2005, denied Defendants' motion for reconsideration of its claim construction order;

WHEREAS this Court, by order filed August 12, 2005, granted Applera's motion for partial summary judgment of noninfringement under the doctrine of equivalents of claim 16 of the '111 patent by Applera's POP products;

WHEREAS Applera's and Bio-Rad's settlement of this matter does not afford either Party the opportunity to appeal the Court's claim construction orders with respect to the '111 patent nor the summary judgment of non-infringement by Applera of the '111 patent under the doctrine of equivalents;

**CONSENT JUDGMENT  
AND PERMANENT INJUNCTION**

WHEREAS Applera and Bio-Rad wish to resolve the dispute between them and have entered into a Settlement Agreement with an effective date of February 9, 2006 ("the Settlement Agreement"), and have consented to judgment as follows;

WHEREAS, the Parties, but for this Agreement, would continue to pursue this litigation including an appeal of the aforementioned claim construction with respect to the '111 patent and the summary judgment of noninfringement of the '111 patent under the doctrine of equivalents;

WHEREAS, this CONSENT JUDGMENT AND PERMANENT INJUNCTION (herein, "Consent Judgment") and the Settlement Agreement and any attachments thereto shall constitute the entire integrated agreement of the parties hereto with respect to the subject matter hereof (the "Agreement");

WHEREAS, based on the proceedings, including testimony of witnesses, exhibits, affidavits, declarations, filings, and, as a condition, among others, to entering into the Settlement Agreement, and based on the agreement of the parties as to the resolution of the claims, the Defendants agree to accept each of the findings made by this Court and herein stated as final and to waive and forego their right to appeal; and

WHEREAS, the parties agree to request the court to vacate the aforementioned claim construction of the '111 patent and summary judgment of noninfringement under the doctrine of equivalents so as to avoid collateral estoppel effects.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

**Jurisdiction**

1. This Court has jurisdiction over the subject matter of this Consent Judgment and the persons of Bio-Rad and Applera, pursuant to 28 U.S.C. §§ 1338(a), 1338(b), 2201, 2202 and 15 U.S.C. § 1121.

2. This Court shall retain jurisdiction over this action and the parties hereto to enforce the Settlement Agreement and this Consent Judgment and any attachments thereto for the purpose of enabling Bio-Rad and Applera to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe the Settlement Agreement and this Consent Judgment, to modify or terminate any of their provisions, to enforce compliance, and to punish violations of their provisions.

**Applicability**

3. This Consent Judgment shall constitute a final and binding adjudication on the merits of all factual and legal issues and claims that were asserted or could have been asserted against Applera and as such shall have preclusive effect to the fullest extent of the law.

4. This Consent Judgment applies to Bio-Rad and Applera and all affiliated entities, including, without limitation, each of their respective officers, directors, agents, employees,

servants, attorneys, parents, subsidiaries, successors and assigns and to all other persons in active concert or participation with any of them who shall have received actual notice of this Consent Judgment by personal service or otherwise, unless specifically provided for.

**Findings**

5. Bio-Rad is the owner of all right, title, and interest to United States Patent No. 5,089,111 ("the '111 patent").

6. This Court finds that all of the claims of the '111 patent are valid and enforceable in all respects.

7. This Court finds that claims 1, 4, 6, and 7 of the '111 patent are infringed by the use of Applera's TSR product with the PRISM 310 Genetic Analyzer.

**Injunctive Relief**

8. Subject to the terms and conditions of the Settlement Agreement, the Defendants, individually and collectively, and all affiliated entities and each and all of the Defendants and their affiliated entities' officers, directors, agents, servants, employees, parents, subsidiaries, assigns or successors in interest and those persons in active concert or participation with them who receive actual notice of this Consent Judgment by personal service or otherwise (collectively, the "Enjoined Persons") will not contest or challenge the validity or enforceability of any claim of the '111 patent or any patent claiming priority therefrom in any proceeding, including any proceeding in any court or tribunal or in the U.S. Patent and Trademark Office, without regard to the identity of any product made, used, or sold by the Defendants or any of their assigns, successors or those who act for or in concert with any of them at any time that may be accused of infringement in any such proceeding, and will not directly or indirectly aid, assist, or participate in the efforts of any third party to do any of the foregoing.

**Final Disposition**

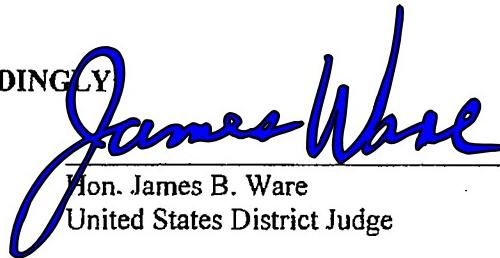
9. This Consent Judgment, together with the Settlement Agreement, resolves all claims or defenses of Applera based on the '111 patent, that were brought or could have been brought in this action against Bio-Rad, including, but not limited to, all counterclaims and affirmative defenses set forth in Applera and Applied Biosystems' Answer to Bio-Rad's Third Amended Complaint and Counterclaims, dated June 13, 2003, which are hereby dismissed with prejudice, and shall constitute the final and binding disposition of this action from which no appeal may be taken.

10. This Consent Judgment, together with the Settlement Agreement, resolves all claims of Bio-Rad that were brought or could have been brought in this action against the Defendants including, but not limited to, all claims set forth in Bio-Rad's Third Amended Complaint for Patent and Trademark Infringement, Dilution, False Designation of Origin, and Unfair Competition, dated May 30, 2003, which are hereby dismissed with prejudice, and shall constitute the final and binding disposition of this action from which no appeal may be taken.

11. In view of the Settlement Agreement and each Party's forbearance from pursuing appellate relief, this Court hereby vacates its previous orders as to claim construction of the '111 patent and its orders granting summary judgment of noninfringement by Defendants of the '111 patent under the doctrine of equivalents.

**LET JUDGMENT BE ENTERED ACCORDINGLY**

Date: March 23, 2006



Hon. James B. Ware  
United States District Judge

**JUDGMENT**

Pursuant to the foregoing Consent Judgment and Order, judgment is hereby entered accordingly.

/s/ M. Peralta

Court Administrator

**CONSENTED TO:**

Dated: 2/13, 2006

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Dated: 2/13, 2006

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